

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

In re:

TAGNER HERSHEL BAILEY, SR.,  
Debtor.

CASE NO.: 12-30587-KKS

CHAPTER: 7

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ANGELA CARTER & KEVIN WHITMORE, AND  
J. BARTLETT QUINN & JAN H. QUINN  
Plaintiffs,

v.

ADV. PRO. NO.: 12-3039-WSS

TAGNER HERSHEL BAILEY, SR.,  
Defendant.

**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (DOC. 10)**

This adversary proceeding came before this Court upon the Plaintiffs' Motion for Summary Judgment (Doc. 10). After due consideration of the pleadings, evidence, and arguments of the parties, this Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

**1. BACKGROUND**

The Debtor, Tagner H. Bailey, Sr., is the sole member of Battery Place Condominiums, LLC ("Battery Place"), a limited liability company that sold condominium units in Chattanooga, Tennessee.<sup>1</sup> The Plaintiffs, Angela Carter and Kevin Whitmore, collectively purchased a unit from Battery Place on or about July 31, 2006, for \$348,000. The Plaintiffs, J. Bartlett Quinn and Jan H. Quinn, also collectively purchased a unit from Battery Place on or about October 27, 2006, for \$348,000. Prior to the Debtor's bankruptcy filing, the Plaintiffs filed complaints

<sup>1</sup> All actions of Battery Place Condominiums, LLC are attributable to the Debtor, Tagner H. Bailey, Sr.

against the Debtor and Battery Place in the Chancery Court for Hamilton County, Tennessee (“State Court”), seeking damages for breach of contract, intentional or negligent misrepresentation, fraudulent inducement, and violations of the Tennessee Consumer Protection Act. The cases were consolidated for trial purposes. On January 6, 2012, the State Court issued a Memorandum Opinion (Doc. 10-1) finding that the Debtor was liable for fraud and deceit, and that the Debtor violated the Tennessee Consumer Protection Act. On April 26, 2012, the Debtor filed for Chapter 7. On July 6, 2012, this Court granted the Plaintiffs relief from the automatic stay for the purposes of converting the State Court’s Memorandum Opinion into a final judgment and liquidating the amount of damages due to the Plaintiffs. The State Court then issued a Final Judgment (Doc. 10-2) on October 15, 2012 summarizing and reaffirming its findings against the Debtor. The Final Judgment also incorporated by reference the Memorandum Opinion.

The State Court found the following facts, as stated in its Memorandum Opinion: Prior to the Plaintiffs’ condominium unit purchases, the Debtor marketed the units as consisting of two bedrooms, a “master suite” and a “guest bedroom.” Brochures provided to the Plaintiffs prior to their purchase depicted two-bedroom units. The Plaintiffs had no reason to further review the floor plans or investigate the Debtor’s assertions. Although the brochures and representations made by the Debtor led the Plaintiffs to reasonably believe that they were purchasing two-bedroom units, in actuality the units were only one-bedroom units. The City of Chattanooga prohibited the use of a “guest bedroom” as an actual bedroom because of the lack of a window and sprinkler system. The Debtor was fully aware of the prohibition prior to the Plaintiffs’ purchase closings. The Debtor testified that he felt “bad” upon learning from the City of Chattanooga that the units could not be used as two-bedroom units, but he did not feel “bad”

enough to call or inform the Plaintiffs. At the time of the closings, the Debtor knew that the Plaintiffs were under the impression that they were purchasing two-bedroom units. The Debtor also knew that the city restriction would have influenced the Plaintiffs' decisions to purchase the units. After the closings, the Plaintiffs first learned about the city restriction and that they had not in fact purchased a two-bedroom unit as originally thought.

## II. STATE COURT ACTION

As stated above, the Plaintiffs brought an action against the Debtor in the State Court for breach of contract, intentional or negligent misrepresentation, fraudulent inducement, and violations of the Tennessee Consumer Protection Act. The Plaintiffs sought actual damages for the difference between the contract price and the fair market value of their unit at the time of the purchase closing. During the State Court proceeding, the Plaintiffs testified that their respective units had a fair market value of \$175,000 to \$200,000. Donald L. Tindell, a local real estate appraiser, testified for the Debtor and stated that the units had a value of \$465,000 each. The State Court, however, noted that Mr. Tindell's appraisal used two-bedroom units as comparables rather than one-bedroom units. Furthermore, the State Court found that the fair market value of the units, as attested to by Mr. Tindell, was not relevant because the measure of damages and the fixing of the value of the units are to be determined at the time of the transaction in question. Mr. Tindell's appraisal referred to the value of the condos after the purchase closings, rather than on the actual dates of the closings. The State Court also highlighted that Mr. Tindell is a social friend of the Debtor and that the Debtor's son worked in Mr. Tindell's office. As a result of the court's apprehensions surrounding Mr. Tindell and his attested value, the State Court found Mr. Tindell's opinion to be unpersuasive and that the Plaintiffs' fair market value opinion was more credible and persuasive.

In its Memorandum Opinion, the State Court found that the evidence was clear and convincing that the Debtor misrepresented the units as two-bedroom units when in reality they were only one-bedroom units. Consequently, the State Court found that the Debtor's actions constituted an unfair act or practice, and was in violation of the Tennessee Consumer Protection Act. The State Court further found that the Debtor engaged in "outright deception" and that the Debtor demonstrated an "egregious case of fraudulent misconduct."

The State Court issued a Final Judgment that incorporated its Memorandum Opinion. In its Final Judgment, the State Court made the following findings:

- a) The Debtor made false representations, both orally and in writing, with the intent to deceive the Plaintiffs.
- b) The Debtor committed an intentional act by misrepresenting that the units were two-bedroom units instead of one-bedroom units.
- c) The Plaintiffs reasonably relied on the Debtor's false representations.
- d) The Plaintiffs' reliance was justified.
- e) The Plaintiffs suffered a loss as a result of the Debtor's false representations.
- f) The purpose of the Debtor's misrepresentations was to cause injury to the Plaintiffs, or the misrepresentations were substantially certain to cause injury to the Plaintiffs.
- g) On their claim seeking damages for fraud and deceit, the Plaintiffs, Angela Carter and Kevin Whitmore, are entitled to compensatory damages in the amount of \$148,000, plus punitive damages in the amount of \$100,000, for a total of \$248,000, which shall continue to bear interest at the applicable statutory rate.

- h) On their claim seeking damages for fraud and deceit, the Plaintiffs, J. Bartlett Quinn and Jan H. Quinn, are entitled to compensatory damages in the amount of \$148,000, plus punitive damages in the amount of \$100,000, for a total of \$248,000, which shall continue to bear interest at the applicable statutory rate.
- i) The Plaintiffs have a judgment in the amount of \$120,000 for their attorney's fees, and a judgment in the amount of \$6,802.22 for their costs in the matter.

### **CONCLUSIONS OF LAW**

Federal Rule of Civil Procedure 56, incorporated by Federal Rule of Bankruptcy Procedure 7056, provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant bears the initial burden of demonstrating that no genuine dispute exists as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Inferences made from underlying facts must be viewed in the light most favorable to the non-moving party when determining whether the movant has met the initial burden. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The Plaintiffs argue that the doctrine of collateral estoppel requires this Court to grant their Motion for Summary Judgment. Collateral estoppel precludes the relitigation of an issue that was previously decided in a judicial proceeding. *St. Laurent v. Ambrose (In re St. Laurent)*, 991 F.2d 672 (11th Cir. 1993). This doctrine applies to state court judgments in nondischargeability actions in bankruptcy court. *Stein v. McDowell (In re McDowell)*, 415 B.R. 601, 607 (Bankr. S.D. Fla. 2008) (citing *Grogan v. Garner*, 498 U.S. 279, 287 (1991)). If the prior judgment was entered by a state court, then that state's collateral estoppel law must be used

to determine the preclusive effect of the state court judgment. *St. Laurent*, 991 F.2d at 676. In order for collateral estoppel to apply, the following must be proven:

(1) that the issue to be precluded is identical to an issue decided in an earlier proceeding, (2) that the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding, (3) that the judgment in the earlier proceeding has become final, (4) that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding, (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

*Treadwell v. Glenstone Lodge, Inc. (In re Treadwell)*, 459 B.R. 394, 404 (Bankr. W.D. Mo. 2011) (quoting *Mullins v. State*, 294 S.W.3d 529, 535 (Tenn. 2009)).

The parties do not dispute that the issues to be precluded in this present action are identical to the issues that were decided in the previous State Court action, that the judgment in the State Court action has become final, or that the Debtor was a party in the earlier State Court action. The point of contention, as argued by the Debtor, is whether the Debtor had a full and fair opportunity to litigate the issues now sought to be precluded. Although this contention does not explicitly speak to any of the specific elements of collateral estoppel as described above, it appears that the Debtor disputes whether the second and fifth elements of collateral estoppel are met.

The Plaintiffs' cause of action falls under 11 U.S.C. § 523(a)(2)(A), which prohibits a debtor from discharging a debt for money or property obtained by "false pretenses, a false representation, or actual fraud . . . ." In order to prevail under § 523(a)(2)(A), the creditor objecting to the dischargeability of a debt must prove "that: (1) the debtor made a false statement; (2) with the purpose and intent to deceive the creditor; (3) the creditor relied on the representations; (4) the creditor's reliance was justifiable; and (5) the creditor sustained a loss as

a result of the [mis]representation.” *Dunn v. Dunn (In re Dunn)*, 473 B.R. 458, 464 (Bankr. N.D. Fla. 2012) (citing *Fuller v. Johannessen (In re Johannessen)*, 76 F.3d 347, 350 (11th Cir. 1996)).

The Plaintiffs in this case previously brought a claim of fraud and deceit against the Debtor. Although the action in this case has been brought under § 523(a)(2)(A), “the essential components [for a successful claim] of fraud under Tennessee law are ‘virtually identical’ to those necessary to establish nondischargeability under § 523(a)(2)(A).” *Truepoint Bank v. Clark (In re Clark)*, No. 08-50899, 2009 WL 693164 (Bankr. E.D. Tenn. Mar. 11, 2009) (citing *In re Bursack*, 163 B.R. 302, 305 (Bankr. M.D. Tenn. 1994)). In fact, when concluding that the Debtor was liable for fraud and deceit, the State Court made explicit findings on the exact same components required by § 523(a)(2)(A).

The Debtor argues that he was denied the full and fair opportunity to litigate issues now sought to be precluded. It seems that the Debtor is referring to two particular issues, the issue of fraud and the issue of damages caused by the alleged fraud. Courts have yet to decide what exactly “constitutes the sort of ‘full and fair opportunity to litigate’ that will support the” application of the collateral estoppel doctrine. *Mullins v. State*, 294 S.W.3d 529, 538 (Tenn. 2009) (citing *Warren v. McCall*, 709 F.2d 1183, 1186 n.7 (7th Cir. 1983)). Given this uncertainty, this Court will address the Debtor’s argument as it relates to the collateral estoppel elements delineated above, specifically the second and fifth element. Accordingly, the Debtor’s assertion bears on whether the issues of fraud and damages were actually raised, litigated, and decided on the merits in the State Court proceeding, and whether the Debtor had a full and fair opportunity in the earlier proceeding to contest the issues of fraud and damages now sought to be precluded.

As previously discussed, the Plaintiffs pursued and were eventually awarded damages for fraud and deceit against the Debtor in the State Court. The simple fact that the underlying cause of action revolved around the allegation of fraud of the Debtor validates that fraud was raised, litigated, and decided on the merits in the State Court. Furthermore, there is no semblance of the Debtor having been denied the full and fair opportunity to contest the allegation of fraud. In reading the State Court's Memorandum Opinion, it is clear that the Debtor was given every conceivable chance to litigate and contest the issue of fraud. The State Court properly ruled on the merits of the case, which, unfortunately for the Debtor, resulted in findings against him.

The Debtor raises concerns over the State Court's finding on the issue of damages, which further required a finding as to the fair market value of the condominium units purchased by the Plaintiffs. The Debtor expresses dismay over the State Court's conclusion that the Plaintiffs' opinion of the fair market value of the units was more credible and persuasive than the opinion of appraiser Donald L. Tindell, which was proffered by the Debtor. The Debtor also maintains that due process was offended and that certain issues must be re-determined as a result of the alleged doubtfulness of the quality, extensiveness, and fairness of procedures in the prior State Court action.

It is clear to this Court that the issue over damages, or more specifically, the issue of the fair market value of the units, was actually raised, litigated, and decided on the merits in the prior proceeding. In the State Court's Memorandum Opinion, the court addressed the fair market value issue that was litigated by the Plaintiffs and the Debtor. Indeed, the State Court found the Plaintiffs' opinion to be more persuasive than that of the appraiser; however, the court did not do so without thought or justification. The State Court articulated reservations over the fact that the appraiser had social and business connections with the Debtor. Moreover, the State Court did not



believe that the appraiser's valuation metrics were appropriate given that Mr. Tindell used two-bedroom units as comparables when appraising the value of one-bedroom units. Lastly, Mr. Tindell's appraisal was made with regard to the time period after the subject purchase closings, rather than, as required by the State Court, at the actual time of the closings.

It is also clear to this Court that the Debtor had the full and fair opportunity in the earlier proceeding to contest the fair market value issue now sought to be precluded. Demonstrating that the Debtor was given the full and fair opportunity, the State Court allowed the Debtor to submit Mr. Tindell's appraisal of the units. The Debtor could have done more to establish an acceptable fair market value of the units; however, the Debtor chose not to do so. Furthermore, there is nothing of record that indicates that the Debtor was precluded from offering more evidence in addition to Mr. Tindell's appraisal.

Upon review of the State Court action, this Court does not accept the argument that due process was offended or that doubt surrounds the quality, extensiveness, or fairness of procedures in the previous action. State court proceedings are merely required to satisfy the minimum procedural requirements of the Due Process Clause in order to have the full faith and credit guaranteed by federal law. *See Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 483 (1982) (citing *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 610 (1974)). There is little doubt that the Debtor received the due process that was constitutionally required in the State Court action.

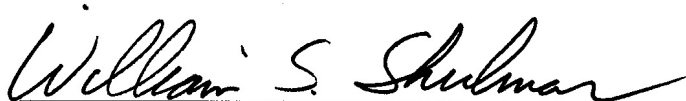
This Court finds that all the elements of collateral estoppel have been met and that the Debtor is collaterally estopped from denying that the judgment entered by the State Court is nondischargeable. Consequently, there are no genuine issues of material fact, and thus, the Plaintiffs are entitled to summary judgment for their cause of action under § 523(a)(2)(A).

The Plaintiffs' Complaint (Doc. 1) comprised three counts: (Count I) Exception to dischargeability under § 523(a)(2)(A), (Count II) Exception to dischargeability under § 523(a)(2)(B), and (Count III) Exception to dischargeability under § 523(a)(6). The Plaintiffs' Motion for Summary Judgment pertains only to Count I. This Order does not address Counts II and III. The Plaintiffs should file a dismissal of Counts II and III in order for this Court to enter a Final Judgment on the Plaintiffs' Complaint.

Based on the foregoing it is hereby

ORDERED that the Plaintiffs' Motion for Summary Judgment is GRANTED pursuant to § 523(a)(2)(A); a separate judgment shall be entered in the amount of TWO HUNDRED FORTY-EIGHT THOUSAND DOLLARS (\$248,000), plus fees, costs, and post-judgment interest at the applicable statutory rate, in favor of Plaintiffs J. Bartlett Quinn and Jan H. Quinn against the Debtor; a separate judgment shall also be entered in the amount of TWO HUNDRED FORTY-EIGHT THOUSAND DOLLARS (\$248,000), plus fees, costs, and post-judgment interest at the applicable statutory rate, in favor of Plaintiffs Angela Carter and Kevin Whitmore against the Debtor.

Dated: March 27, 2013

  
WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE